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Attorney General
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Phoenix, Arizona 85007

Robert M. Corbin

April 27, 1982
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ARIZONA ATTORNEY GENERAL

INTERAGENCY

The Honorable Art Hamilton
Arizona State Representative
State Capitol, House Wing
Phoenix, Arizona 85007

Re: I82- 045 (R82-014)

Dear Representative Hamilton:

You have asked whether it is constitutionally or legally permissible for the Arizona Interscholastic Association (AIA) to require students who transfer to a private school when their public school is closed to lose a year of sports eligibility when students from the same school retain their full eligibility when transferring to a public school.

As we understand, the AIA has adopted on behalf of its member high schools an ineligibility rule making a high school student who voluntarily transfers to another school ineligible to participate in interscholastic sports for one year following his or her transfer. The AIA, however, has partially waived the ineligibility rule for students who are forced to transfer to another high school because their school is being closed. The waiver is only partial, in that the waiver only applies to those who are forced to transfer and who elect to transfer to certain public schools. The ineligibility rule still applies to those students who are forced to transfer to another school because their school is being closed, but choose to transfer to a private school.

Other jurisdictions have found similar ineligibility rules as applied in particular factual situations unconstitutional in violation of the federal Equal Protection Clause. See, e.g., Sullivan v. University Interscholastic League, 616 S.W.2d 170, 172, (Tex. 1981) (the rule providing that a student who had represented a high school other than his

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present high school in either football or basketball was ineligible for one calendar year after moving to another district to participate in the same sport in the school to which he changed was not rationally related to the purpose of deterring recruitment of high school athletes and hence was a violation of the Equal Protection Clause); Sturup v. Mahan, 290 N.E.2d 64 (Ind. App. 1972), modified, 261 Ind. 463, 305 N.E.2d 877 (1974) (ineligibility rule violated equal protection by being unreasonably broad in excluding from eligibility many students who move for reasons unrelated to athletics). But see Whipple v. Oregon School Activities Association, 52 Or. App. 419, 629 P.2d 384 (1981). Application of the ineligibility rule may also impinge upon the First Amendment right to free exercise of religion. But see Cooper v. Oregon School Activities Association, 52 Or. App. 425, 629 P.2d 386 (1981).

It is not within the authority of the Attorney General to hold AIA rules constitutional or unconstitutional and any pronouncement regarding such would not be enforceable. However, we think the AIA action raises some very serious constitutional questions and that it is an issue that is clearly appropriate for legislative, as well as school board, resolution.

Sincerely,



BOB CORBIN
Attorney General

BC:CWL:lm